

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Subsection (b)(178) of Section 7.50, Title 14, CCR
Re: Silver King Creek

- I. Date of Initial Statement of Reasons: December 13, 2005
- II. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 3, 2006
Location: Sacramento
 - (b) Discussion Hearing: Date: March 3, 2006
Location: Riverside
 - (c) Adoption Hearing: Date: April 7, 2006
Location: Monterey
- III. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

On August 18, 2005 the California Fish and Game Commission adopted an emergency regulation change for Silver King Creek (Alpine County). This change was based on protecting a proposed restoration project associated with Paiute cutthroat trout. The emergency regulation was implemented to protect native Paiute cutthroat trout, which are listed as Threatened pursuant to the federal Endangered Species Act, by prohibiting angling in a portion of its historic range below Llewellyn Falls. The 120-day period for the emergency regulation is now expired; hence, the pre-existing regulations became effective which will allow angling below Llewellyn Falls during the regular trout season.

The section of Silver King Creek below Llewellyn Falls to Snodgrass Creek is dominated by nonnative and hybridized trout. These trout pose a significant threat to the future recovery and protection of pure Paiute cutthroat trout that exist above the falls. This threat would stem from illegal movement of nonnative trout from below the falls to above the falls by humans. The Department believes that allowing angling below Llewellyn Falls significantly increases the opportunity for someone to move nonnative or hybridized trout to stream areas above Llewellyn Falls. Because of this threat, the Department recommends that the Commission permanently adopt the previous emergency regulations to prohibit all fishing all year in Silver King Creek and tributaries including lakes above Snodgrass Creek .

Currently, the future of the proposed Paiute cutthroat trout restoration project involving the removal of nonnative trout in the stream reach downstream of Llewellyn Falls to Snodgrass Creek is uncertain due to litigation and permitting issues. The proposed project is identified as one of the recovery criteria in the draft Recovery Plan for Paiute Cutthroat Trout, which is in review by the U.S. Fish and Wildlife Service. This project is supported by the U.S. Fish and Wildlife Service, U.S.D.A. Toiyabe National Forest, and Trout Unlimited. It is anticipated that if and when the fish population is restored, the Department will recommend to the Commission that the recovered fishery be considered as designated Heritage Trout water.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code.

Reference: Sections 200, 205, 206, 215 and 316.5, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.
- (d) Identification of Reports or Documents Supporting Regulation Change: None.
- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: No alternatives were identified.
- (b) No Change Alternative: The changes are necessary to safeguard the recovery of a federally threatened species.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation affects a short stream reach in a remote wilderness area of northern California.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

Current law (Section 200, Fish and Game Code) delegates authority to the Fish and Game Commission to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles. The Commission's regulations may establish, extend, shorten, or abolish open and closed seasons; establish, change, or abolish bag limits, possession limits, and size limits; establish and change areas or territorial limits for their taking; and/or prescribe the manner and means of taking (Section 205, Fish and Game Code). Current law (Section 315, Fish and Game Code) further states that the Commission may, at any time, close any stream, lake, or other inland waters, or portions thereof, to the taking of any species or subspecies of fish to protect and properly conserve the fish.

Emergency regulations adopted on August 18, 2005 for Silver King Creek between Llewellyn Falls and Snodgrass Creek expired on December 22, 2005. Current general trout and salmon fishing regulations provide that fishing is open from the last Saturday in April through November 15, and as such, the area between Llewellyn Falls and Snodgrass Creek will be open to fishing on April 29, 2006, while Silver King Creek and tributaries including lakes above Llewellyn Falls will be closed to fishing. The Department is proposing to permanently adopt the expired emergency regulations and close to all fishing all year in Silver King Creek and tributaries including lakes above Snodgrass Creek. This action is necessary to help prevent the unauthorized movement of nonnative trout from below Llewellyn Falls to above Llewellyn Falls.

Other waters in existing portions of the watershed currently closed to angling would remain closed.